



Printer's Error
February 25, 1999

HOUSE BILL No. 1584

DIGEST OF HB 1584 (Updated February 22, 1999 8:55 am - DI 76)

Citations Affected: IC 35-33.

Synopsis: Bail and controlled substance offenses. Provides that, if a defendant has been charged with a controlled substance offense classified as a Class A felony or Class B felony, the court must impose at least one of certain described conditions as a condition of bail. Requires a court that is setting the amount of bail for a defendant who has been charged with a controlled substance offense classified as a
(Continued next page)

Effective: July 1, 1999.

Smith V, Foley

January 21, 1999, read first time and referred to Committee on Courts and Criminal Code.
February 22, 1999, amended, reported — Do Pass.

HB 1584—LS 7240/DI 69+



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Digest Continued

Class A felony or Class B felony to take into account the amount of the controlled substance involved in the offense. Requires a court to carefully consider the necessity of setting a substantial amount of bail to assure a defendant's appearance in court or to assure the physical safety of another person or the community if the defendant has been charged with a controlled substance offense that is classified as a Class A felony or Class B felony.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1584

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-33-8-3.2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) A court may
3 admit a defendant to bail and impose any of the following conditions
4 to assure the defendant's appearance at any stage of the legal
5 proceedings, or, upon a showing of clear and convincing evidence that
6 the defendant poses a risk of physical danger to another person or the
7 community, to assure the public's physical safety:
8 (1) Require the defendant to:
9 (A) execute a bail bond with sufficient solvent sureties;
10 (B) deposit cash or securities in an amount equal to the bail;
11 (C) execute a bond secured by real estate in the county, where
12 thirty-three hundredths (0.33) of the true tax value less
13 encumbrances is at least equal to the amount of the bail;
14 (D) post a real estate bond.
15 The defendant must also pay the fee required by subsection (d).

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(2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) The fee required by subsection (d).

(B) Fines, costs, fees, and restitution as ordered by the court.

(C) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).

(D) In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

(5) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the



1 risk exists.

2 (8) Impose any other reasonable restrictions designed to assure
3 the defendant's presence in court or the physical safety of another
4 person or the community.

5 **(9) If the defendant has been charged with a Class A felony or**
6 **Class B felony described in IC 35-48-4, the court shall impose**
7 **at least one (1) of the following conditions:**

8 **(A) Require the defendant to avoid all contact with persons**
9 **involved in the use, manufacture, growth, or distribution**
10 **of controlled substances.**

11 **(B) Require the defendant to refrain from knowingly or**
12 **intentionally remaining in places where controlled**
13 **substances are being used, manufactured, grown, or**
14 **distributed.**

15 **(C) Require the defendant to refrain from being physically**
16 **present within:**

17 **(i) a two (2) block area of; or**

18 **(ii) a designated area near;**

19 **the location at which the Class A felony or Class B felony**
20 **described in IC 35-48-4 allegedly occurred unless the**
21 **defendant resides within the area.**

22 **(D) Require the defendant to refrain from possessing a**
23 **firearm, destructive device, or other dangerous weapon.**

24 (b) Within thirty (30) days after disposition of the charges against
25 the defendant, the court that admitted the defendant to bail shall order
26 the clerk to remit the amount of the deposit remaining under subsection
27 (a)(2) to the defendant. The portion of the deposit that is not remitted
28 to the defendant shall be deposited by the clerk in the supplemental
29 public defender services fund established under IC 33-9-11.5.

30 (c) For purposes of subsection (b), "disposition" occurs when the
31 indictment or information is dismissed, or the defendant is acquitted or
32 convicted of the charges.

33 (d) Except as provided by subsection (e), the clerk of the court shall:

34 (1) collect a fee of five dollars (\$5) for each bond or deposit under
35 subsection (a)(1); and

36 (2) retain a fee of five dollars (\$5) from each deposit under
37 subsection (a)(2).

38 The clerk of the court shall semiannually remit these fees to the board
39 of trustees of the public employees' retirement fund for deposit into the
40 special death benefit fund. The fee required by subdivision (2) is in
41 addition to the administrative fee retained under subsection (a)(2). This
42 subsection expires December 31, 1998.



(e) With the approval of the clerk of the court, the county sheriff may collect the bail and fees required by subsection (d). The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 2. IC 35-33-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance, including:

(1) the length and character of the defendant's residence in the community;

(2) the defendant's employment status and history and his ability to give bail;

(3) the defendant's family ties and relationships;

(4) the defendant's character, reputation, habits, and mental condition;

(5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring him to trial;

(6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;

(7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of

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1 nonappearance;

2 (8) the source of funds or property to be used to post bail or to pay
3 a premium, insofar as it affects the risk of nonappearance; ~~and~~

4 **(9) if the defendant has been charged with a Class A felony or**
5 **Class B felony described in IC 35-48-4, the amount of the**
6 **controlled substance involved in the offense; and**

7 ~~(9)~~ (10) any other factors, including any evidence of instability
8 and a disdain for authority, which might indicate that the
9 defendant might not recognize and adhere to the authority of the
10 court to bring him to trial.

11 (c) **If the defendant has been charged with a Class A felony or**
12 **Class B felony described in IC 35-48-4, the court shall carefully**
13 **consider the necessity of setting a substantial amount of bail to**
14 **assure the defendant's appearance in court or to assure the**
15 **physical safety of another person or the community.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1584, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 8 through 22.

Page 3, line 23, delete "(C)" and insert "(A)".

Page 3, line 26, delete "(D)" and insert "(B)".

Page 3, line 26, delete "entering or".

Page 3, line 27, before "remaining" insert "**knowingly or intentionally**".

Page 3, line 29, delete "(E)" and insert "(C)".

Page 3, delete lines 36 through 42.

Page 4, line 1, delete "(H)" and insert "(D)".

Page 4, delete lines 3 through 10.

Page 4, delete lines 41 through 42.

Page 5, delete lines 1 through 7.

Page 6, line 11, delete "However, if a".

Page 6, delete lines 12 through 18.

and when so amended that said bill do pass.

(Reference is to HB 1584 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 3.

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